

Letter of Findings: 03-20130607P
Tax Administration
For the Tax Period Ending August 31, 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Withholding Tax – Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; [45 IAC 15-11-2](#).

Taxpayer seeks abatement of the penalty for late payment of employee withholding tax.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer was late in making a withholding payment for the liability period of August 31, 2013; the Indiana Department of Revenue ("Department") assessed Taxpayer a ten percent penalty for failure to timely remit withholding tax. Taxpayer filed a protest; the Department conducted the administrative hearing by telephone, and this Letter of Findings results. Further facts will be provided as required.

I. Withholding Tax – Late Payment Penalty.

DISCUSSION

Taxpayer's withholding payment for the period of August 31, 2013, was due by September 20, 2013. Taxpayer made its payment a few days later. Taxpayer argues that its "failure to pay was due to reasonable cause and that the penalty should be waived."

IC § 6-8.1-10-2.1 states in part:

- (a) Except as provided in [IC 6-3-4-12\(j\)](#) and [IC 6-3-4-13\(l\)](#), a person that:
 - (1) fails to file a return for any of the listed taxes;
 - (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
 - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
 - (4) fails to timely remit any tax held in trust for the state; or
 - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-27](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; is subject to a penalty.
- (b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:
 - (1) the full amount of the tax due if the person failed to file the return;
 - (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
 - (3) the amount of the tax held in trust that is not timely remitted;
 - (4) the amount of deficiency as finally determined by the department; or
 - (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including an assessment of a penalty – is presumptively valid.

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case by case basis according to the facts and circumstances of each taxpayer." *Id.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Taxpayer, in its protest letter, states that one of its employees:

visited the INtax website and entered the August worksheet for State and County payroll withholding taxes. After completing the worksheet, [Employee M] printed it and provided it to the Controller, [Employee H], to notify her of the payment amount. [Employee M] was recently assigned responsibility for payroll tax reporting and payment via the INtax website; this being only her third occasion to file.

Taxpayer further notes that "[Employee M] later found out that she had unintentionally overlooked clicking the 'submit' button on the INtax website to initiate payment of the tax." Employee M was later informed by the Controller "that the August payment had not been taken from the operating account." Taxpayer states that it immediately "contacted INtax customer service to remedy the situation" and that "[o]n September 24, 2013, Taxpayer paid the August withholding tax on the INtax website."

Taxpayer states in its protest that it has "an exemplary record of filing and paying its payroll taxes," and that Taxpayer's "sound internal accounting procedures" allowed it to discover that the withholding tax had not been paid "before the Department notified Taxpayer of the deficiency." Taxpayer provided the Department with affidavits from the Controller (Employee H) and Employee M. Taxpayer also provided the Department with copies of its "INtax" payment history for the last few years. The Department finds that Taxpayer has established reasonable cause under [45 IAC 15-11-2\(c\)](#). Thus Taxpayer's argument is sustained regarding the penalty protest.

FINDING

Taxpayer's protest is sustained.

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